NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION II

No. CACR 07-961

	Opinion Delivered MARCH 5, 2008
LYNDON A. ELDER APPELLANT	APPEAL FROM THE MONTGOMERY COUNTY CIRCUIT COURT, [NO. CR-06-39]
V.	HONORABLE JERRY WAYNE LOONEY, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED

JOHN B. ROBBINS, Judge

Lyndon A. Elder appeals his convictions for three counts of sexual indecency with a child, for which he was sentenced to two years in prison. The children were three females, E.M., D.S, and L.H., who were eleven years old or younger on the night in question. Appellant was accused of acting inappropriately with the children at an annual Halloween carnival held at the Oden school gymnasium. Appellant contends that there is insufficient evidence to support the convictions. We disagree and affirm.

In reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State, considering only the evidence that supports the verdict, and we will affirm a conviction if substantial evidence exists to support it. *Cummings v. State*, 353 Ark. 618, 110 S.W.3d 272 (2003). Substantial evidence is that which is of sufficient force

and character that it will, with reasonable certainty, compel a conclusion one way or the other, without mere speculation or conjecture. *Sublett v. State*, 337 Ark. 374, 989 S.W.2d 910 (1999). There is a presumption that a person intends the natural and probable consequences of his acts. *See Alexander v. State*, 78 Ark. App. 56, 77 S.W.3d 544 (2002). Appellant was charged with sexual indecency with a child, which required proof that he was older than age eighteen and that he solicited a child under age fifteen to engage in sexual contact. Ark. Code Ann. § 5-14-110(a)(1). Arkansas Code Annotated section 5-14-101 (9) defines "sexual contact" as "any act of sexual gratification involving the touching, directly or through clothing, of ... buttocks[.]"

Appellant challenged the State's proof at trial in his directed-verdict motion, asserting that the State failed to show that he was over the age of eighteen, that he solicited sexual contact, or that he was seeking sexual gratification. None of the arguments persuade us on appeal. Thus, we affirm the trial court's denial of his motion for directed verdict.

We hereafter examine the evidence in the light most favorable to the State. Appellant admittedly attended the carnival that night, which is an annual event conducted at the Oden school gymnasium. Appellant wore a woman's short blue dress, high-heeled women's shoes, and a boa-type scarf. Appellant was observed to be a man with a beard, and the dress was short enough to reveal a tattoo on his thigh. Appellant's brother testified that appellant was thirty-two years old at the time of trial.

The witnesses testified that at the carnival, appellant was heard asking several persons, including children in the eleven-year-old range, to "smack my ass." Some of the children

were offered fifty cents to do so. While appellant stated that he believed it was terribly funny and only meant as a joke, some adults and parents were very upset. One of the girls, L.H., said appellant went further by trying to grab her and take her to the locker room, where he said he wanted her to pull her pants down. L.H. ran away at this juncture to tell her mother. Other children testified that they heard similar requests from appellant that night. Local law enforcement was called to remove appellant from the premises. Appellant resisted apprehension and had to be subdued by use of handcuffs and pepper spray. Appellant admitted to having four prior DWI convictions, although he denied being intoxicated that night.

We have no hesitation in rejecting appellant's sufficiency argument regarding the proof of appellant being over the age of eighteen. There was testimony that appellant appeared to be a grown man with a full beard, and furthermore, appellant's brother verified that appellant was age thirty-two at trial. *See also Hadley v. State*, 322 Ark. 472, 910 S.W.2d 675 (1995) (jury's observation of defendant at trial was sufficient circumstantial evidence that he was more than sixteen years old).

Moving to the other bases challenging the sufficiency of the evidence, we likewise hold that the trial court did not err in denying the motion for directed verdict. There was enough evidence to go to the jury on whether this solicitation was for "sexual contact" because asking children to "smack" one's "ass" clearly falls within the statutory definition of sexual contact. Ark. Code Ann. § 5-14-101(9).

The question on appeal is distilled to whether this request made to the children was in fact for "sexual gratification." Using definitions from *Webster's Third International Dictionary*, unabridged (1961), the supreme court has defined "sexual gratification" as, essentially, something that pleases the sexual organs or gratifies the libido. *See McGalliard v. State*, 306 Ark. 181, 182–83, 813 S.W.2d 768, 769 (1991). In *Farmer v. State*, 341 Ark. 220, 15 S.W.3d 674 (2000), the supreme court, noting that it had previously held that the phrase "sexual gratification" is to be construed in accordance with its reasonable and commonly accepted meaning, reiterated that it is not necessary for the State to provide direct proof that an act was done for sexual gratification if it can be assumed that the desire for sexual gratification is a plausible reason for the act. *See also Warren v. State*, 314 Ark. 192, 862 S.W.2d 222 (1993). Moreover, intent is seldom capable of direct proof but must usually be inferred from the circumstances. *See, e.g., Turbyfill v. State*, 92 Ark. App. 145, 211 S.W.3d 557 (2005). On this evidence, the trial court did not err in refusing to direct a verdict for the defense.

Appellant's convictions are affirmed.

GLADWIN and HEFFLEY, JJ., agree.